



ANNO QUADRAGESIMO NONO

# GEORGI III. REGIS.

\*\*\* \*\*\*\*\*

## Cap. 66.

An Act for inclosing Lands in the Townships of *Elton* and *Winster*, in the Parish of *Youlgreave*, in the County of *Derby*. [12th May 1809.]

WHEREAS there are within the Townships of *Elton* and *Winster*, in the Parish of *Youlgreave*, in the County of *Derby*, a certain Open Undivided Stinted Pasture, called *Winster Bank Pasture*, and certain Commonable Lands and Waste Grounds within the Township of *Elton*, containing together, by Estimation, Five hundred Acres, or thereabouts: And whereas the King's most Excellent Majesty, in Right of his Duchy of *Lancaster*, is Lord of the Wapentake of *Wirksworth*, within which the said Township of *Elton*, and the Commons and Waste Lands within the same are situate, and His Majesty, in such Right, claims an Interest in the Soil of such Waste: And whereas *Bache Thornhill* and *Hylton Jolliffe* Esquires, are Lords of the Manor of *Elton* aforesaid: And whereas the Majority of the Householders in *Elton* are the Patrons or Nominators to the perpetual augmented Curacy of *Elton* aforesaid; and the Reverend *Gervas Powell* Clerk, in right of said Curacy, is entitled to One Moiety or Half Part of a certain Modus for Tythe Hay, and also to a Moiety or Half Part of Tythe Corn in Kind, arising within the said Township of *Elton*; and the said *Bache Thornhill* Esquire, *John Brittlebank* Gentleman, and the Heir at Law of *Charles Gregory*, deceased, are seised in Fee of the other Moiety thereof: And whereas the Reverend *George Pearson* Clerk, is the Curate of the perpetual augmented Curacy of *Winster*

[Loc. & Per.]

14 M

afore-

aforesaid: And whereas the said *Bache Thornhill* Esquire, *William Ashmore*, *John Briddon*, *Thomas Webster*, *Robert Alsop*, and several other Persons, are seised or possessed of, or otherwise entitled to the Lands and Grounds situated and being within the Township of *Elton*, by this Act intended to be divided, allotted, and inclosed, and to certain Rights of Common therein: And whereas the Owners and Proprietors of ancient Messuages, Lands, Tenements, and Hereditaments, within the said Township of *Elton*, are, in right thereof, respectively entitled to Common of Pasture upon the Commons and Waste Grounds within the Township of *Elton* aforesaid: And whereas the most Noble *William Duke of Devonshire*, *Henry Woolley*, *Daniel Prime*, *William Staley*, and divers other Persons, are respectively Owners and Proprietors of and interested in an Open Undivided Stinted Pasture, within the Township of *Winster* aforesaid, called *Winster Bank Pasture*, which is also intended by this Act to be divided, allotted, and inclosed: And whereas the King's most Excellent Majesty, in Right of his Duchy of *Lancaster*, is entitled to a certain Rent or Fee, called *Palfrey Silver*, payable by the Inhabitants of *Elton* aforesaid: And whereas an Act was passed in the Forty-first Year of the Reign of His present Majesty, intituled, *An Act for consolidating in One Act certain Provisions usually inserted in Acts of Inclosure, and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts*: And whereas the said Open Undivided Stinted Pasture is in its present State incapable of any considerable Improvement, and it would tend to the Advantage of all Persons interested therein, if the said Open Undivided Stinted Pasture, Commonable Lands and Waste Grounds were divided and inclosed, and specific Parts and Shares thereof allotted and assigned to such Proprietors respectively, according to their respective Property, Rights, and Interests therein, to be enjoyed in Severalty for ever: But such Division, Allotment, and Inclosure cannot be effectually made and established without the Aid and Authority of Parliament: May it therefore please Your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That *John Nuttall*, of *Matlock*, in the said County of *Derby*, Gentleman, shall be and he is hereby appointed the sole Commissioner for dividing, allotting, and inclosing the said Open Undivided Stinted Pasture, Commonable Lands and Waste Grounds, and for putting this Act in Execution, subject to the Rules, Orders, Directions, and Regulations of the said recited Act, which shall be applied, deemed, and taken as Part of this Act, except in such Cases only where the same are hereby varied or altered, and that he the said *John Nuttall*, or such other Commissioner as shall hereafter be appointed in pursuance of this Act, and in Manner herein-after mentioned to execute the several Powers of this Act, may and he is hereby authorized and empowered to call to his Assistance, and to employ such Person as he shall think proper as an Assistant in making the Valuations, Calculations, Surveys, and Allotments of the said Division and Inclosure, and to allow to such Assistant, and Surveyor, for his or their Trouble, such Compensation as the said *John Nuttall*, or such other Commissioner shall deem reasonable.

Commissioner.

Appointment  
of new Com-  
missioner.

II. And be it further enacted, That if the said *John Nuttall*, or any other Commissioner to be appointed in his stead as herein-after mentioned, shall die, refuse, neglect or become incapable to act before this Act shall

have been fully carried into Execution, then and in every such Case a new Commissioner shall be chosen and appointed by a Majority in Value of the Persons who for the Time being shall be interested in the said Division and Inclosure, who shall by themselves or their Agents be present at a Meeting to be appointed for that Purpose by Notice as herein-after is directed, and held within Twenty Days next after such Death, Refusal, Neglect, or Incapacity shall happen to be made known; and every Commissioner so to be appointed shall have the like Powers and Authorities for putting this and the said recited Act into Execution, in all respects, as the Commissioner to whose Place he shall succeed was invested with.

III. And be it further enacted, That the said Commissioner shall and he is hereby required to cause public Notice to be given in each of the Chapels of *Elton* and *Winster* aforesaid, upon some *Sunday* immediately after Divine Service, or by Writing under his Hand, to be affixed on the most public outer Door of the said respective Chapels, and also by Advertisement to be inserted in the Newspaper called *The Derby Mercury*, or in some other Newspaper published or circulated in the said County of *Derby*, of the Time or Place of the first and every other Attendance for the Execution of this Act, Eight Days at the least before any such Attendance shall be held (Attendance by Adjournment only excepted); and all the Attendances of the said Commissioner shall be held at some convenient Place within the said Parish, or within Eight Miles of the Boundaries thereof.

Notice of  
Sittings.

IV. Provided always, and be it further enacted, That all other Notices necessary or requisite to be made or given by the said Commissioner, shall be made and given by Writing to be affixed upon the most public outer Door of the said respective Chapels, or by Advertisement in the said Newspaper, or in some other Newspaper published or circulated in the said County of *Derby*.

Other Notices,  
how given.

V. And be it further enacted, That if any Dispute or Difference shall arise between any of the Parties interested or claiming to be interested in the said Division and Inclosure, touching or concerning the respective Rights and Interests which they or any of them shall have or claim to have in the said Open Undivided Stinted Pasture, Commonable Lands and Waste Grounds hereby intended to be divided, allotted, and inclosed, or touching or concerning any Matter or Thing relating to the said Division and Inclosure, it shall be lawful for the said Commissioner to examine into, hear, and determine the same: Provided always, that nothing in this Act contained shall authorize the said Commissioner to determine the Title to any Messuages, Cottages, Lands, and Hereditaments whatsoever.

Commissioner  
to determine  
Differences.

VI. And be it further enacted, That in case any Person or Persons, interested or claiming to be interested in the said intended Division, Allotment and Inclosure, shall be dissatisfied with any Determination of the said Commissioner, touching or concerning any Claim or Claims of the Right of the Soil of the said Common and Commonable Lands and Waste Grounds, or of any Rights of Common, or other Rights or Interests, in, over, or upon the Lands and Grounds hereby directed to be divided, allotted, and inclosed, or any Part thereof, or touching or concerning any other Matter or Thing relating to the said Division, Allotment, and Inclosure,

Allowing Parties to try  
their Rights  
by an Issue at  
Law.

closure, it shall be lawful for the Person or Persons so dissatisfied to proceed to a Trial at Law of the Matter so determined by the said Commissioner, at the then next or at the following Assizes to be holden for the said County of *Derby*; and for that Purpose the Person or Persons who shall be dissatisfied with the Determination of the said Commissioner, shall cause an Action to be brought on a feigned Issue against the Person or Persons in whose Favour such Determination shall have been made, within Three Calendar Months next after such Determination of the said Commissioner; and the Defendant or Defendants in such Action or Actions shall, and he, she, or they, is and are hereby required to name an Attorney or Attornies who shall appear thereto, or file Common Bail, and accept one or more Issue or Issues whereby such Claim or Claims and the Right or Rights thereby insisted upon, may be tried and determined (such Issue or Issues to be settled by the proper Officer of the Court in which such Action or Actions shall be commenced in case the Parties shall differ about the same); and the Verdict or Verdicts which shall be given in such Action or Actions, shall be final, binding and conclusive, upon all and every Person and Persons whomsoever, unless the Court wherein such Action or Actions shall be brought shall set aside such Verdict or Verdicts, and order a new Trial to be had thereon, which it shall be lawful for the Court so to do, as in other Cases; and that after such Verdict or Verdicts shall be obtained, and not set aside by the Court, the said Commissioner shall and he is hereby required to act in conformity thereto, and to allow or disallow the Claim or Claims thereby determined according to the Event of such Trial or Trials: Provided always, that the Determination of the said Commissioner, touching such Claim or Claims to such Common Right, or other Rights or Interests, in, over, or upon the said Lands and Grounds hereby directed to be divided, allotted, and inclosed, or any Part thereof, which shall not be objected to, or being objected to, the Party or Parties objecting, not causing such Action at Law to be brought and proceeded in as aforesaid, shall be final and conclusive upon all Parties.

Commissioner  
may award  
Costs.

VII. And be it further enacted, That in case the said Commissioner, upon the Hearing and Determination of any Claim or Claims, Objection or Objections, Difference or Dispute which shall be brought before him under and by virtue of this or the said recited Act, shall see Cause to award any Costs or Charges to any of the Parties concerned therein, it shall and may be lawful for the said Commissioner, upon Application made to him for that Purpose, to settle, assess, and award such Costs and Charges as he shall think reasonable, to be paid to the Party or Parties in whose Favour any such Determination of the said Commissioner shall be made by any Person or Persons whose Claim or Claims, Objection or Objections, shall or may by such Determination be disallowed or over-ruled, and such Costs and Charges shall and may be levied and recovered in the same Manner as the Expences of passing and executing this Act are directed and authorized to be recovered.

If Parties die  
Proceedings  
not to abate.

VIII. Provided always, That if any of the Parties in any Action to be brought in pursuance of the Act, shall die pending the same, such Action shall not abate by reason thereof, but shall be proceeded in as if such Event had not happened.

IX. And

IX. And be it further enacted, That if any Suit or Suits shall be commenced or prosecuted, touching or concerning the Title of any Person or Persons to any Messuages, Lands or Tenements in the said Townships, such Suit or Suits shall not impede, delay or hinder the said Commissioner from proceeding in the Execution of the Powers vested in him by the said recited Act and this Act, but the said Division, Allotment, and Inclosure shall be proceeded in notwithstanding such Suit or Suits; and the Allotment or Allotments to which such Suit or Suits shall relate, may be had and taken by the Person or Persons who upon the Determination of such Suit or Suits shall become entitled to the same.

Suits not to delay the Inclosure.

X. Provided always, and be it further enacted, That if any Person or Persons in whose Favour any Determination as aforesaid shall have been made, and against whom any such Action or Actions might have been brought if living, shall die before any such Action or Actions shall have been brought, and before the Expiration of the Time herein-before limited for bringing such Action or Actions, it shall be lawful for the Person or Persons who might have brought such Action or Actions against the Person or Persons so dying, to bring the same within the Time so limited as aforesaid, against such Person or Persons as if actually living, and to serve the Clerk to the said Commissioner with Process for commencing such Action or Actions, in the same Manner as the Party or Parties might have been served therewith if living; and it shall thereupon be incumbent on the Heir or Heirs, or other Person or Persons who shall claim the Benefit of such Determination as aforesaid, to appear and defend such Action or Actions in the Name or Names of the Person or Persons so dead, and Proceedings shall be had therein in the same Manner as if such Person or Persons had been actually living; and the Rights of all Parties shall be equally bound and concluded by the Event of such Action or Actions.

In case of Death of Parties before Actions brought, such Actions to be carried on in the same Manner as if the Person had been living, &c.

XI. Provided also, and be it further enacted, That nothing in this Act contained shall extend to enable the said Commissioner to determine any Right between any Parties contrary to the Possession of any such Parties (except in Cases of Encroachments made as herein-after mentioned); but in case the said Commissioner shall be of Opinion against the Right of the Person or Persons so in Possession, he shall forbear to make any Determination thereupon until the Possession shall have been given up by or recovered from such Person or Persons by Ejectment or other due Course of Law.

Right of Possession not to be determined by Commissioner.

XII. And be it further enacted, That the said Commissioner shall and he is hereby required to set out and appoint one or more Piece or Parcel of Ground (Parcel of the said Common and Commonable Lands and Waste Ground of *Elton* aforesaid, hereby intended to be divided, allotted and inclosed), in such convenient Situation or Situations as he shall think proper, not exceeding One Acre in the whole, to be used for the Purpose of Public Watering Places for Cattle, and for getting Stone, Gravel, Sand, or other Materials for repairing the Highways and Roads within the said Township, and for the Use of the Inhabitants thereof.

Allotments for Watering Places and for getting Materials.

XIII. And be it further enacted, That if it shall appear to the said Commissioner that any Encroachments have been made upon the said Commons

Encroachments made within Limits.

[Loc. & Per.]

Years to be  
deemed Part  
of the Com-  
mons.

mons and Waste Lands within the Space of Thirty Years next before the First Day of *January* One thousand eight hundred and nine, all such Encroachments shall be deemed Part of the said Commons and Waste Lands hereby directed to be divided, allotted, and inclosed, and shall be divided and allotted accordingly; and that it shall and may be lawful to and for the said Commissioner to enquire and determine what Inclosures and Encroachments have been made upon the said Commons and Waste Lands, and whether the same are to be deemed Part thereof or not, pursuant to the Directions of this Act; and all such Inclosures and Encroachments, as shall be deemed Part of the said Commons and Waste Lands, shall be valued as if in an unimproved State, and without considering the Improvements made thereupon by building or otherwise, in case the same shall be allotted to the respective Persons who may have inclosed and improved the same; but if such Inclosures or Encroachments shall be allotted to any other Person or Persons, then and in such Case the Person or Persons who shall receive the same, shall pay to the several Persons respectively who may have inclosed and improved the same, such Compensation in Money in such Manner and at such Times as the said Commissioner shall think reasonable, and by Writing under his Hand shall direct and appoint.

Allowance to  
Commissioner.

XIV. And be it further enacted, That out of the Money that shall be raised for defraying the Expences of obtaining and executing this Act, there shall be paid to the said Commissioner, and his Successor to be appointed as aforesaid, who shall act in the Execution of the Powers and Authorities hereby vested in or given to him or them respectively, as a full Recompence for his Pains and Trouble, the Sum of Two Pounds Twelve Shillings and Sixpence, and no more, for each and every Day he shall be employed in travelling to, returning from and attending in the Execution of this and the said recited Act; and that the said Commissioner and his Successor to be appointed as aforesaid, shall defray his travelling Expences and all other Expences at all Meetings to be held in pursuance of this and the said recited Act.

Roads and  
other Conve-  
nencies to  
be made.

XV. And be it further enacted, That the said Commissioner shall and he is hereby authorized and required, before he proceeds to the Allotments herein-after mentioned, to set out, appoint and direct, or cause to be made, set out and completed, such public and private Roads and Ways, and also such Banks, Ditches, Drains, and other Conveniencies, in, over, and within the said Open Undivided Stinted Pastures, Commonable Lands and Waste Grounds intended to be divided, allotted and inclosed, and also in, over and within any of the old Inclosures within the said Township of *Elton*, as the said Commissioner shall judge necessary or proper, and that as well all such private Roads and Ways shall respectively be made and completed, and at all Times thereafter kept in Repair in such Manner and by such Person or Persons, and the Grass, Herbage and Soil of such private Roads and Ways and other Conveniencies, shall appertain and belong to such Person or Persons, and for such Purposes as the said Commissioner in and by his Award shall direct, and in the mean Time and until his said Award shall be made and executed as the said Commissioner in and by any Writing under his Hand shall order, direct or appoint; and the said Commissioner shall and may order and award Issue, and pay such Satisfaction and Recompence as he shall think reasonable, to any Owner or Owners of Lands or Hereditaments

ments which may be damaged or destroyed by making or repairing any such Roads or Ways, or other Conveniencies as aforesaid.

XVI. And be it further enacted, That it shall and may be lawful to and for the said Commissioner, with the Concurrence and Order of Two Justices of the Peace acting in and for the said County of *Derby*, and in manner and subject to Appeal as in the said recited Act is mentioned, to divert, stop up, discontinue, alter or change any old public Carriage or private Roads or Footways leading into, through, over or upon the said Open Undivided Stinted Pasture, Commonable Lands and Waste Grounds, or the old Inclosures lying within the said Township of *Elton*; and that such public Carriage Roads as shall be so stopped up and discontinued, shall be deemed Part of the Lands and Grounds to be divided, allotted and inclosed pursuant to this Act.

For stopping up Roads.

XVII. And be it further enacted, That the said Commissioner shall and he is hereby required to set out, allot and appoint unto the King's most Excellent Majesty, His Heirs and Successors, in right of his Duchy of *Lancaster*, or to any other Person or Persons, such Parcel or Parcels of Land, out of and from the said Wastes, Commons, and uninclosed Lands in *Elton* aforesaid, hereby directed to be divided, allotted and inclosed, as shall in the Judgement of the said Commissioner be equal in Value to or an Equivalent for his said Rent, or Fee called *Palfrey Silver*, or any other Rents, Quit-rents, Fee Farm Rents, or other dry or unimproved Rents which are now respectively due and payable to the said King's Majesty, His Heirs and Successors, in Right of His said Duchy, or to any other Person or Persons, from the Inhabitants, of the said Township of *Elton*, or out of, from, or in respect of the said Wastes and Commons, or any Part thereof, or out of, from, or in respect of any Messuages, Cottages, Lands or Hereditaments, situate, lying and being within the Township of *Elton* aforesaid, which belong to Persons having Right of Common in and upon the said Wastes, and Commons: Provided nevertheless, that the Land<sup>s</sup> so to be set out, allotted and appointed as a Compensation or Equivalent for any Rents in respect of any such Messuages, Cottages, Lands or Hereditaments as last-mentioned, shall be deducted out of, or taken from the several or respective Allotments of the Person or Persons who now pay, or shall or may at the Time of such Allotment be liable to pay such respective Rents.

Allotment to His Majesty and Successors in lieu of Quit Rents.

XVIII. And be it further enacted, That the said Commissioner shall and he is hereby authorized and required to set out and allot, unto and for the said Curate of *Elton* and his Successors, and the other Owners and Proprietors of the said Tythes, according to their several and respective Rights and Interests therein as Owners of the Tythes of Corn and Grain arising or due or payable within the Township of *Elton* aforesaid, so much and such Part and Parcel of the said Commons and Waste Grounds of *Elton* aforesaid, hereby intended to be divided, allotted and inclosed, as are subject to the Payment of Tythes, as shall in the Judgement of the said Commissioner be equal in Value to One-eighteenth Part thereof, after the Deductions thereof for the Roads to be made in pursuance of the said recited Act, and also the Allotment for Watering Places, and for getting Materials for the Repairs of the Roads, and other Purposes, for and in lieu and in full Compensation for all the Tythes of Corn and Grain arising or due or payable, or which could or might arise or become due or payable,

Allotments to the Curate of Elton and other Tythe Owners, for the Tythes of Corn and Grain.

payable, out of or for the said Commons and Waste Grounds, and also so much and such Part and Parcel of the said Commons and Waste Grounds, hereby intended to be divided, allotted and inclosed, as shall in the Judgement of the said Commissioner be equal in Value to One-fifth Part of all the Lands and Inclosures, subject to the Payment of Tythes in Kind, situate within the said Township of *Elton*, in actual Tillage on an average for Three Years last past, to be computed from the Day of the passing of this Act, for, in lieu of, and full Compensation for all the Tythes of Corn and Grain, arising or due or payable, or which could or might arise or become due or payable from or out of all or any of the Lands and Inclosures within the Township of *Elton* aforesaid, and also so much and such Part and Parcel of the said Commons and Waste Grounds of *Elton* aforesaid, as shall in the Judgement of the said Commissioner be not less than the clear Yearly Value of Five Pounds, for, in lieu of, and full Compensation for all other Tythes, Moduses and Payments within the said Township of *Elton*, and which said Allotment, lastly directed to be set out, shall be accepted in lieu of and full Compensation of and for all and all Manner of Tythes whatsoever, which now are or heretofore have been due or payable to the said Tythe Owners of *Elton* aforesaid, or any other Money Payments whatsoever arising or becoming due or payable, or which could or might arise or become due or payable within the said Township of *Elton*, (Easter Dues, Mortuaries and Surplice Fees to the Curate of *Elton* only excepted.)

Glebe and  
Tythe Allot-  
ments to be  
Ring-fenced.

XIX. And be it further enacted, That the Allotment and Allotments herein-before respectively directed to be set out and allotted to and for the said Curate of *Elton* in respect of Glebe Lands, and to the said respective Tythe Owners, in lieu of Tythes or other Payments in respect thereof as before mentioned and set forth, shall (save and except on such Parts and Sides thereof as the said Commissioner shall order and direct to be fenced by any of the Owners or Proprietors of Lands, whose Allotments shall adjoin thereto) be ring-fenced and fenced on each Side of any public Carriage Road that shall by the said Commissioner be laid out or directed to be made or continued through the same, with good Stone Walls of the Height of Five Feet Three Inches, and of the Breadth of Two Feet at the Bottom, and constructed in a substantial and workmanlike Manner, with customary Coping and good Wood Gates, properly set up and hung on proper Stone Posts, in such Parts of the said Allotments as the said Commissioner shall think necessary, by and at the Expence of the respective Owners and Proprietors of Lands, subject to the Payment of Tythes within the said Township of *Elton*, in such Proportions as the said Commissioner shall direct or appoint, and that such Walls, Fences and Gates shall for ever after the making thereof be maintained and kept in Repair by the said Curate of *Elton* and his Successors, and the said respective Tythe Owners, their Heirs and Assigns for the Time being respectively, so far as their respective Allotments shall extend; and that from the First Day of *November* next after the said Allotments for or in lieu of Tythes or Moduses, and Payments in lieu thereof, shall have been allotted and fenced as aforesaid, all and all Manner of Tythes, both Great and Small, and all Moduses and Payments in lieu thereof, (Mortuaries, Easter Offerings, and Surplice Fees excepted), as well for and in respect of the said Wastes, Commons and uninclosed Lands hereby intended to be divided, allotted and inclosed, as also for and in respect of the ancient Inclosures, and



and all other Lands within the said Township of *Elton*, shall cease, determine, and be for ever extinguished.

XX. And be it further enacted, That after setting out and allotting such Part or Parts of the said Commons and Waste Lands in *Elton* aforesaid, as shall be appropriated for making Watering Places, Roads, and for getting Stone, and the Portion of the several Allotments herein-before directed to be made in respect of Tythes accruing from the said Commons and Waste Lands in *Elton* aforesaid, the said Commissioner shall and he is hereby authorized and required to set out so much of the said Commons and Waste Lands of *Elton* aforesaid, as shall in the Judgement of the said Commissioner be equal in Value to One-sixteenth Part of the Remainder thereof, and shall allot and award One Moiety thereof unto the King's most Excellent Majesty, His Heirs and Successors, in right of his said Duchy, in lieu of and as a Compensation for the Right and Interest of his said Majesty in or over the Soil of the said Commons and Waste Lands, and shall also allot and award the remaining Moiety thereof respectively to the said *Bache Thornhill* and *Hylton Jolliffe*, and their respective Heirs and Assigns, for and in lieu of and as a full Recompence and Satisfaction for their Rights and Interests in and to the Soil of the said Commons and Waste Lands within the said Township of *Elton*, by this Act directed to be divided and inclosed.

Allotment to the King, and the Lords of the Manor of *Elton*.

XXI. And be it further enacted, That it shall be lawful for the said Commissioner, and he is hereby required in case he shall be requested so to do by any Body or Bodies Corporate or Collegiate, or the Husbands, Guardians, or Trustees of any of the Owners or Proprietors of any Allotment or Allotments to be made by virtue of this Act being under Coverture, Infants, Lunatics, or Persons beyond the Seas, or otherwise incapacitated, or by any Tenant for Life or in Tail, or other Person being in Possession of, but not having the absolute Estate or Interest in the said Open Undivided Stinted Pastures, Commons and Waste Grounds, intended to be divided, allotted and inclosed as aforesaid, such Request being in Writing under the Hand or Hands of such Person or Persons, to sell in manner by the said recited Act directed, so much of the respective Allotment or Allotments to be made to such Person or Persons in respect of such Messuages, Lands, Tenements or Hereditaments, as shall in the Judgement of the said Commissioner be equal in Value to the respective Proportions of the Expences of the obtaining and putting into Execution this and the said recited Act, and the Expences of fencing, walling and inclosing the Allotment or Allotments of such Person or Persons; and the said Commissioner shall assign, allot and award the said Lands so to be sold, to the Purchaser or Purchasers thereof, upon Payment of the Value thereof by such Person or Persons to the said Commissioner, who shall apply the same in or to the Payment of such Expences, and in fencing, walling and inclosing the said Allotment or Allotments respectively.

Commissioner may sell Part of Allotments for paying Expences, etc.

XXII. And be it further enacted, That in case such Sale as herein-before mentioned shall take Place, and in case any Overplus Money shall remain after such Sale as aforesaid, such Overplus Money shall be paid to the Person or Persons, Body or Bodies Corporate or Collegiate entitled thereto, if seised in Fee Simple of such Lands, or otherwise such Surplus shall be paid into the Bank of *England*, in the manner directed by the said recited Act, with respect to Money to be paid for the Purchase or

Application of Surplus

Exchange of Lands, Tenements, or Hereditaments, or of any Timber or Wood growing thereon, and which Sum of Money ought to be laid out in the Purchase of other Lands, Tenements, or Hereditaments, to be settled to the same Uses.

For making  
Exchanges.

XXIII. And be it further enacted, That it shall be lawful to and for the said Commissioner to set out, allot, award, and partition, or set out in Severalty, any Lands, Tenements, or Hereditaments whatsoever within the said several Townships of *Elton* and *Winster*, in lieu and in exchange for any other Lands, Tenements and Hereditaments whatsoever within the said several Townships, or within any adjoining Parish, Hamlet, Manor, Township or Place, provided that all such Exchanges be ascertained, specified and declared in the Award of the said Commissioner, and be made with the Consent of the Owner or Owners, Proprietor or Proprietors of the Lands, Tenements or Hereditaments which shall be so exchanged, whether such Owner or Owners, Proprietor or Proprietors shall be a Body or Bodies Politic, Corporate or Collegiate, or a Tenant or Tenants in Fee Simple, or in Fee Tail, General or for Life or Special, or by the Courtesy of *England*, or for Years determinable on any Life or Lives, or with the Consent of the Guardians, Trustee or Trustees, or Person or Persons acting as such Trustee or Trustees for the Time being, for any School or Schools, Fees for charitable or other Uses, Husbands, Committees or Attorneys of or acting for any such Proprietors or Owners as aforesaid, who at the Time of making such Exchange or Exchanges shall be respectively Infants, Females Covert, Lunatics or under any other legal Disability, or who shall be beyond the Seas or otherwise disabled to act for themselves, himself or herself, such Consent to be testified in Writing under the Common Seal of the Body Politic, Corporate or Collegiate, and under the Hands of the other consenting Parties respectively; and all and every Exchange and Exchanges so to be made shall be good, valid and effectual in the Law to all Intents and Purposes whatsoever: Provided nevertheless, that no Exchange shall be made of any Lands, Tenements or Hereditaments held in Right of any Church, Chapel or other Ecclesiastical Benefice, without the Consent testified as aforesaid, of the Patron thereof, and of the Lord Bishop of the Diocese in which such Lands, Tenements or Hereditaments so to be exchanged shall lie and be situate.

Expences of  
Exchanges or  
Partitions by  
whom to be  
paid.

XXIV. And be it further enacted, That the Costs, Charges and Expences attending the making and completing of any Exchanges or Partitions to be made under or by virtue of the said recited Act or of this Act, shall be paid, borne and defrayed by the several Persons consenting to the making such Exchanges or Partitions, in such Manner and in such Shares and Proportions as the said Commissioner shall by his said Award order and direct.

Allotment to  
the Curate of  
*Winster*.

XXXV. And, in order to augment the said Curacy of *Winster*, be it further enacted, That the said Commissioner shall and he is hereby authorized, empowered, and required to set out and allot unto the Curate of *Winster* aforesaid, and his Successors, One Allotment, not less than Four Acres and Three Roods of the said Parcel of Land, called *Winster Bank Pasture*, as in the Judgement of the said Commissioner shall be of the average Value of the said Pasture; and the same shall be accepted by  
the

the said Curate of *Winster* and his Successors, in lieu of and as a full Recompence, Compensation and Extinguishment for all and all Manner of Tythes, both Great and Small, and all Moduses, Compositions and Payments for Tythes growing or arising within, by, from or out of the said Parcel of Land called *Winster Bank Pasture*, if any such there shall happen to be due or payable.

XXVI. And be it further enacted, That the said Allotment to the said Curate of *Winster* shall be fenced on all such Sides and Parts thereof as shall not be ordered by the said Commissioner to be fenced by any other Proprietor or Proprietors, with ring or outermost Fences, by Walls made in a substantial Manner of the Height of Five Feet and Three Inches, and of the Breadth of Two Feet at the Bottom, and constructed in a substantial and workmanlike Manner, with a good Wood Gate properly set up and hung on proper Stone Posts, in such Part of the said Allotment as the said Commissioner shall think proper, by and at the Expence of the respective Owners and Proprietors of the said Parcel of Land called *Winster Bank Pasture*, in such Proportions as the said Commissioner shall direct or appoint, and that the future Repair of the said Walls and Fences shall for ever thereafter be maintained and kept in Repair by the said Curate of *Winster* and his Successors.

Allotment to the Curate of *Winster*, to be fenced by the Proprietors.

XXVII. And be it further enacted, That the several Parcels of Land and Allotments which shall be set out and allotted by virtue of this or the said recited Act (except such Allotments as shall be made to the respective Curates of *Elton* and *Winster*, and the respective Tythe Owners aforesaid), shall be sufficiently inclosed and fenced within such Time as the said Commissioner by any Writing or Writings under his Hand, or by his said Award or Instrument shall order, direct or appoint, and such Walls and Fences shall be made, and at all Times and for ever after the making thereof, be supported, maintained and kept in Repair, by such Person or Persons as the said Commissioner shall by any such Writing or by his said Award direct; and in case any Person or Persons shall neglect or refuse to fence his, her, or their Allotment or Allotments within the Time directed or appointed, it shall be lawful for such Commissioner, and he is hereby required to fence the same, and the Expence of such Fences shall be levied and recovered in like Manner as Penalties or other Sums of Money are hereby and by the said recited Act directed to be levied and recovered.

For inclosing the Rest of the Proprietors Allotments.

XXVIII. And be it further enacted, That the said Commissioner shall and he is hereby required to set out and allot the Residue of the said Open Undivided Stinted Pasture, Commonable Lands and Waste Grounds hereby intended to be divided, allotted and inclosed, unto, between and amongst the several Persons who at the Time of making such Division, Allotment, and Inclosure shall be entitled thereto, or intersted therein, in proportion to their several and respective Shares, Estates, Rights, Properties and Interests; and in making the several Allotments to be made under and by virtue of this Act, the said Commissioner shall and he is hereby required to have due regard to Situation and Convenience, as well as to the Quantity and Quality of the Land to be allotted, so as that the Allotment or Allotments, of each Person be laid as near together, and as contiguous to their several Dwellings and Farm Houses and Estates as conveniently may be, consistently with the general Convenience of the Parties

Allotment of Residue amongst Proprietors.

Parties interested in the said Division, Allotment and Inclosure: Provided always, that it shall be lawful for the said Commissioner, at any Time before executing his Award, to make any such Alterations in the Allotment or Allotments, or in the Fences which he may have set out and ordered, or in any of the Orders and Directions relating thereto, which he may have made in pursuance of this or the said recited Act, as he may judge right and expedient, and in case any Person or Persons be injured by such Alteration, on Account of any Expences he or they may have been at, or otherwise the said Commissioner shall ascertain and determine what Recompence shall be made to him, her or them for such Injury, and shall order and direct by whom and in what Manner such Recompence shall be made.

Leases at Rack Rent to be void.

XXIX. And be it further enacted, That all and every Lease and Leases or other Agreements at Rack Rent, subsisting of all or any Part or Parts of the said Commons and Waste Grounds within the said Township of *Elton*, as well as of the said *Winster Bank Pasture*, for any Term or Number of Years unexpired, shall immediately upon such Allotments being made, or so soon after as the said Commissioner shall by his said Award direct, cease, determine and be void, in respect only of the said Commons, Waste Grounds and uninclosed Lands, by this Act directed to be allotted and inclosed, the respective Owners and Proprietors of the said Hereditaments so in Lease as aforesaid making such Satisfaction to such Lessee or Lessees, Tenant or Tenants, as the said Commissioner shall direct or appoint for or in respect of such Lease or Leases or other Agreements, or as an Equivalent for the same.

Proprietors may sell Allotments before the Execution of the Award, and their Right of Common separate from their other Property.

XXX. And be it further enacted, That it shall and may be lawful for any of the Owners or Proprietors of any Common Right upon the Open and Undivided Stinted Pasture, Commonable Lands and Waste Grounds hereby directed to be divided, allotted and inclosed, to sell and dispose of all his, her or their Right or Interest in, or the Allotment or Allotments to be made or set out by virtue of this Act, in such Manner as he or she might have done at any Time after the Execution of the said Award; and it shall be lawful for the said Commissioner, and he is hereby authorized and empowered to award all and every such Allotment or Allotments which shall be sold and disposed of, or be made or set out in lieu of any Common Right so sold or disposed of, to the Purchaser or Purchasers thereof, or other Person or Persons who shall be entitled to the same by such Sale or Disposition.

No settlement, Will, &c. to be altered.

XXXI. Provided always, and be it further enacted, That nothing herein contained shall extend, or be construed, deemed, adjudged or taken to revoke, make void, alter or annul any Settlement, Deed, or Will, or to prejudice any Person or Persons having or claiming any Jointure, Dower, Portion, Rent, Service, Mortgage, Debt, Charge or Incumbrance, in, out of, upon or affecting any of the Lands and Grounds to be divided, allotted, and inclosed as aforesaid, or any Lands, Tenements or Hereditaments which shall be changed or divided by virtue of this Act or the said recited Act, or any Part or Parcel thereof respectively, but that the several Lands, Tenements and Hereditaments so to be assigned, allotted, exchanged or divided as aforesaid, shall immediately after making such Allotments, Exchanges, Partitions or Divisions, respectively be, remain and enure, and

be.

be held and enjoyed; and the several Persons to whom the same shall be assigned and allotted, or given in exchange, shall from thenceforth stand and be seized and possessed thereof respectively to such and the same Uses, and to and for such and the same Estates, and with and under such and the same Powers and Authorities, and subject to the same Wills, Limitations, Conditions, Settlements, Provisions, Remainders, Reversions, Mortgage, Debts, Charges and Incumbrances, as the several Messuages, Lands, Grounds and Common Rights, in lieu or in respect whereof such Allotments and Exchanges shall be made, now stand limited or liable to, or would have been liable to in case this Act had not been made.

XXXII. And be it further enacted, That if any Person or Persons shall advance any Sum or Sums of Money for defraying the Expences of obtaining and passing this Act, or of carrying the same and the said recited Act into Execution, every such Person or Persons shall be repaid the same, with Interest after the Rate of Five Pounds *per Centum per Annum* out of the first Monies that shall be raised or received by the said Commissioner by virtue of this Act for defraying such Expences.

Money advanced to be repaid, with Interest.

XXXIII. And be it further enacted, That the said Commissioner shall and he is hereby required, within Three Calendar Months after the Execution of the Award, to make an Extract on Parchment under his Hand, of so much thereof as shall contain an accurate Description of the Allotment or Allotments which shall be made to His said Majesty, together with such Regulations or Provisions, relative to such Allotment or Allotments, or to any other Rights or Interests of His said Majesty as may be contained in such Award, and shall annex to such Extract a Map or Plan of such Allotment or Allotments, and transmit the same to the Clerk of the Council of His Majesty's Duchy of *Lancaster* for the Time being.

Extracts from the Award of His Majesty's Allotments to be transmitted to the Duchy Court.

XXXIV. And be it further enacted, That Once at least in every Year during the Execution of this Act (such Year to be computed from the Day of the passing thereof), the said Commissioner shall and he is hereby required to make a true and just Statement or Account of all Sums of Money by him received and expended, or due to him for his own Trouble and Expences in the Execution of this and the said recited Act; and such Statement or Account when so made, together with the Vouchers relating thereto, shall be by him laid before One or more of His Majesty's Justices of the Peace for the said County of *Derby*, to be by him or them examined and balanced, and such Balance shall be by such Justice or Justices stated in the Books of Accounts to be kept in the Office of the Clerk of the said Commissioner; and no Charge or Item in such Accounts shall be binding on the Parties concerned, or valid in Law, unless the same shall have been duly allowed by such Justice or Justices.

Commissioner's Accounts to be laid before a Justice.

XXXV. And be it further enacted, That the said Proprietors shall pay their own Expences when they attend the said Commissioner at any of his Meetings to be holden for putting this Act into Execution.

Proprietors to pay their own Expences.

XXXVI. And whereas considerable Expence has been incurred by the Township of *Elton*, in ascertaining and adjusting the Claims of the said Township upon the adjoining Commons and Waste Grounds; therefore, be it further enacted, That all such Costs, Charges and Expences already

For defraying the Expences of this Act.

[*Loc. & Per.*]

14 P

incurred,

incurred, as well as the Costs, Charges and Expences attending the preparing, soliciting and passing this Act, and of surveying, admeasuring, planning, valuing, dividing and allotting the Lands and Grounds so intended to be divided, allotted, and inclosed as aforesaid, and of preparing and enrolling the said Award, and all the Expences of forming, making, completing and repairing the public and private Carriage Roads and Highways, Banks, Ditches, Drains, Watercourses and Bridges to be set out and appointed by the said Commissioner as such, and all other Costs, Charges and Expences in and about the carrying this and the said recited Act into Execution, and all and every Sum and Sums of Money, Recompence and Satisfaction which the said Commissioner is hereby directed, authorized and empowered to make or pay, and which he shall direct to be made or paid by or to any Person interested in the said Division and Inclosure, shall from Time to Time be borne and defrayed by all the Proprietors and Owners of and Persons interested in the said Lands and Grounds hereby intended to be divided, allotted and inclosed, (except the said respective Curates of *Elton* and *Winster* for the Time being, and their Successors, and also the said several other Tythe Owners, their Heirs and Assigns), in and by such Shares and Proportions, at such Time or Times, as well before as after the completing the Division of the said Lands and Grounds, and to such Person or Persons as the said Commissioner shall by Writing under his Hand or by his said Award order or direct, whereof Notice in Writing shall from Time to Time be affixed on the Door of the respective Chapels of *Elton* and *Winster* aforesaid, at least Twenty Days before the Time such Payment shall be required.

The King and other Persons not charged with certain Expences.

XXXVII. Provided always, and be it further enacted, That nothing in this Act contained shall extend or be construed to extend, to enable the said Commissioner to charge the King's most Excellent Majesty, *Bacbe Thornhill*, or *Hylton Joliffe*, as Lords of the Manor of *Elton*, with any Expences incurred previous to the Twenty-first Day of *February* last past.

For making Deductions from the King's Allotment to defray Expences of Fencing, etc.

XXXVIII. And be it further enacted, That it shall and may be lawful for the said Commissioner, and he is hereby empowered to make a Deduction in Land from the Allotment or Allotments to be made by virtue of this Act to His Majesty, His Heirs and Successors, of so much of the said Allotment or Allotments as shall be sufficient in the Judgement of the said Commissioner, to raise by Sale thereof a Sum of Money adequate to the Share or Proportion of His said Majesty, of the Costs, Charges and Expences attending the passing and executing this Act, and of making the said Roads, and of ring-fencing and subdividing the said Allotment or Allotments to His Majesty by virtue of this Act, and such other Expences as shall attend the same; and that it shall be lawful for the Chancellors and Council of the said Duchy for the Time being, in the Court of Revenue of the said Duchy, to make Orders for the Sale and Disposal of such Part or Parts of the said Allotment or Allotments, so to be deducted as aforesaid, by public Auction or Private Contract; and upon Payment of the Purchase Money into the Hands of the Receiver General of the Revenues of the said Duchy, or his Deputy for the Time being, it shall and may be lawful to and for the Chancellor of the said Duchy for the Time being, by any Deed or Writing, under the Seal of the said Duchy, to grant, convey, and release in the Name of His Majesty, His Heirs and Successors, unto such several  
and

and respective Purchasers and their Heirs in Fee Simple the several and respective Parcels of Land or Ground by him, her or them respectively purchased, free from all Rents and Payments whatsoever; which said Deed or Writing so sealed as aforesaid, and duly inrolled with the Auditor for the North Parts of the said Duchy for the Time being, shall be effectual and sufficient in Law to vest in every such Purchaser and his Heirs, the Fee Simple and Inheritance of the Lands therein to be comprized and described, notwithstanding the Act of the First Year of the Reign of Queen Anne, intituled, *An Act for the better Support of her Majesty's Household, and the Honour and Dignity of the Crown*, or any other Act or other Impediment or Disability whatsoever; and the Receipt of the Receiver General, or his Deputy, for such Purchase Monies shall be a full and sufficient Release and Discharge to every such Purchaser for the same, and that such Purchasers shall in no respect be liable or bound to see to the Application thereof.

XXXIX. And be it further enacted, That the Award to be made by the said Commissioner, when inrolled in Manner directed by the said recited Act, shall be deposited in a Box and kept in the Chapel of *Winster* aforesaid.

Directing where the Award shall be deposited.

XL. And be it further enacted, That if any Person or Persons shall think himself, herself, or themselves aggrieved by any Thing done in pursuance of this or the said recited Act, (other than and except such Claims, Matter, and Things as are herein-before directed or authorized to be ascertained, settled, tried or determined by the Verdict of a Jury, or whereby any of the Provisions of the said recited Act or of this Act, the Determination of the said Commissioner is directed to be final and conclusive), then and in every such Case he, she, or they may appeal to the General Quarter Sessions of the Peace which shall be holden for the said County of *Derby*, within Four Calendar Months next after the Cause of Complaint shall have arisen, on giving to the said Commissioner and to the Party or Parties concerned Fourteen Days Notice in Writing of such Appeal and of the Matter thereof; and the Justices (not interested in the Premises) in their said General Quarter Sessions are hereby required to hear and determine the Matter of every such Appeal, and to make such Order therein, and award such Costs and Damages as to them in their Discretion shall seem reasonable, and by their Order or Warrant to levy the Costs and Damages which shall be so awarded, by Distress and Sale of the Goods and Chattels of the Party or Parties liable to pay the same, rendering the Overplus (if any) to the Owner or Owners of such Goods and Chattels, after deducting the reasonable Charges of such Warrant, Distress, and Sale; and the Determination of the said Justices shall be final and conclusive to all Parties concerned, and shall not be removed by *Certiorari* or any other Writ or Process whatsoever into any of His Majesty's Courts of Record at *Westminster* or elsewhere; but in case such Appeal shall appear to the said Justices to be frivolous, vexatious, or without Foundation, then the said Justices shall award such Costs to be paid by the Appellant or Appellants, as to them in their Discretion shall seem reasonable, and to be levied in Manner aforesaid.

Appeal to the Sessions.

XLI. Provided always, and be it further enacted, That nothing in this Act contained shall bar, prejudice, lessen or defeat the Rights, Titles and Interests which any of His Majesty's Subjects now have and enjoy, or shall

Rights of Mining reserved.

shall or may hereafter claim to have and enjoy, of digging for, searching, working, and carrying on Mines of Lead Ore, and taking and enjoying such Lead Ore, in, upon, and out of all the said Commons and Waste Grounds within the said Townships intended to be divided, allotted and inclosed as aforesaid; but that all and every His Majesty's Subjects shall from henceforth for ever hereafter have and enjoy such Rights or mining for Lead Ore, and use and exercise such Liberties and Privileges in respect thereof, in and throughout all and every Part of the said Open Undivided Stinted Pasture and Commonable Lands intended to be divided, allotted and inclosed as aforesaid, in as ample and extensive a Manner as they have hitherto of Right enjoyed and exercised the same, making Satisfaction for any Damages that shall be done thereby; any Thing herein contained to the contrary thereof in anywise notwithstanding.

General  
Saving of  
Rights.

XLII. Saving always to the King's most Excellent Majesty, His Heirs and Successors, as well in Right of His Duchy of *Lancaster*, as in Right of His Crown, and to all and every other Person or Persons, Body or Bodies Politic, Corporate or Collegiate, his, her, or their Heirs, Successors, Executors and Administrators respectively (other than and except the several Persons, Bodies Politic, Corporate or Collegiate, to whom any Allotment or Allotments of Land or other Compensation shall be made or provided by virtue of this Act, in respect of the Interest or Property for which such Allotment or Allotments or Compensation shall be made, his, her, and their Heirs, Successors, Executors, Administrators and Assigns, and except such other Rights and Interests as the Intent and Purpose of the Division, Allotment and Inclosure hereby authorized shall absolutely require to be barred, destroyed or extinguished by virtue of this Act), all such Estates, Rights, Titles and Interests, as they, every or any of them had or enjoyed, of, in, to, or out of the Lands and Grounds hereby directed to be divided, allotted, and inclosed before the passing of this Act, or could, might or ought to have held or enjoyed, in case this Act had not been made.

Act to be  
printed by  
the King's  
Printer.

XLIII. And be it further enacted, That this Act shall be printed by the Printer to the King's most Excellent Majesty, and a Copy thereof so printed shall be admitted as Evidence thereof by all Judges, Justices, and others.

---

LONDON: Printed by GEORGE EYRE and ANDREW STRAHAN,  
Printers to the King's most Excellent Majesty. 1809.